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DEPARTMENT OF COMMERCE

International Trade Administration

[A-351-840]

Certain Orange Juice from Brazil: Notice of Court Decision Not in Harmony with Final Results of Administrative Review and Notice of Amended Final Results of Administrative Review Pursuant to Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: On October 24, 2012, the United States Court of International Trade (CIT) sustained the Department of Commerce's (the Department's) results of redetermination pursuant to the CIT's remand order in Fischer S.A. Comercio, Industria and Agricultura v. United States, Court No. 10-00281, Slip Op. 12-59 (CIT 2012) (Fischer). The Department is notifying the public that the final CIT judgment in this case is not in harmony with the Department's final results and is amending the final results of the administrative review of the antidumping duty order on certain orange juice (OJ) from Brazil covering the period of review (POR) of March 1, 2008, through February 28, 2009.

EFFECTIVE DATE: November 5, 2012.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood, AD/CVD Operations, Office 2, Import Administration – International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone (202) 482-3874.

SUPPLEMENTARY INFORMATION:

Background

On August 18, 2010, the Department published its final results in the antidumping duty administrative review of OJ from Brazil covering the POR of March 1, 2008, through February 28, 2009. See Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part, 75 FR 50999 (Aug. 18, 2010) (Final Results). In the Final Results, the Department: 1) denied offsets to dumping based on constructed export prices that exceeded normal value (NV); and 2) included the amount of a net exchange variation shown on Fischer S.A. Comercio, Industria, and Agricultura's (Fischer's) financial statements in its financial expense ratio. Fischer challenged the Department's Final Results. On April 30, 2012, the CIT remanded to the Department its Final Results, directing the Department to: 1) further explain its "zeroing" methodology (i.e., why the Department's differing interpretation of section 771(35) of the Tariff Act of 1930, as amended (the Act), in antidumping duty investigations and administrative reviews is reasonable); and 2) exclude a "net exchange variation" amount shown in Fischer's financial statements from the calculation of the financial expense ratio.¹ On August 14, 2012, the Department issued its final results of redetermination. See Final Results of Redetermination Pursuant to Court Remand, dated August 14, 2012 (Remand Results) (available at <http://ia.ita.doc.gov/remands>). In the Remand Results, the Department provided the required explanation with respect to its "zeroing" methodology and recalculated Fischer's margin after revising its NV to remove the "net exchange variation" account from Fischer's financial expense ratio. On October 24, 2012, the CIT sustained the Remand Results.

¹ See also Order, Ct. No. 10-00281 (CIT June 22, 2012).

Timken Notice

Consistent with the decision of the CAFC in Timken Co. v. United States, 893 F. 2d 337 (CAFC 1990) (Timken), as clarified by Diamond Sawblades Mfrs. Coalition v. United States, 626 F. 3d 1374 (CAFC 2010), pursuant to section 516A(c) of the Act, the Department must publish a notice of a court decision that is not “in harmony” with a Department determination and must suspend liquidation of entries pending a “final and conclusive” court decision. The CIT’s October 24, 2012, judgment sustaining the Department’s Remand Results with respect to Fischer constitutes such a decision. This notice is published in fulfillment of the publication requirements of Timken.

Amended Final Results

Based on the CIT’s affirmation of the Remand Results, the Department amends its Final Results, and the weighted-average margin for Fischer for the period March 1, 2008, through February 28, 2009, is 1.18 percent.

The Department will instruct U.S. Customs and Border Protection to assess antidumping duties on entries of the subject merchandise exported during the POR from Fischer based on the revised assessment rates calculated by the Department.

This notice is issued and published in accordance with sections 516A(c)(1), 751(a)(1), and 777(i)(1) of the Act.

Paul Piquado
Assistant Secretary
for Import Administration

December 20, 2012
(Date)

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